

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

SALLY A. GALBRAITH, DECEASED

Claimant

VS.

ST. CATHERINE HOSPITAL

Respondent

AND

LIBERTY MUTUAL INSURANCE COMPANY

Insurance Carrier

AND

KANSAS WORKERS COMPENSATION FUND

Docket No. 154,243

ORDER

This appeal is on behalf of the heirs of deceased Sally A. Galbraith. The appeal is from an Award entered by Administrative Law Judge Kenneth S. Johnson on October 10, 1997. The Appeals Board heard oral argument April 15, 1998.

APPEARANCES

James B. Zongker of Wichita, Kansas, appeared on behalf of the heirs of the deceased. B. G. Larson of Dodge City, Kansas, appeared for respondent and its insurance carrier. Gary R. Hathaway of Ulysses, Kansas, appeared for the Kansas Workers Compensation Fund.

RECORD AND STIPULATIONS

The Appeals Board has reviewed and considered the record identified in the Award and has adopted the stipulations listed in the Award.

ISSUES

The issues on appeal are as follows:

1. A patient struck claimant in the chest on February 6, 1991. During treatment for medical problems that followed, which included cardiac arrest, claimant was intubated for an extended period. The intubation caused scar tissue on her vocal cords. During surgery for the scar tissue, claimant developed acute respiratory failure and suffered a myocardial infarction. Claimant died August 17, 1993. Should claimant's death be treated as caused by accidental injury arising out of and in the course of her employment?
2. What benefits, if any, are due claimant's minor child?
3. What benefits, if any, should be paid by the Kansas Workers Compensation Fund?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The ALJ found claimant's death was not compensable. After reviewing the record and considering the arguments, the Appeals Board finds the Award should be reversed. Death benefits should be granted and respondent ordered to pay past medical expenses. The evidence does not support an award against the Fund.

Findings of Fact

1. Claimant worked for respondent as a registered nurse. On February 6, 1991, a patient struck claimant in the chest. Claimant testified that for several seconds her heart stopped beating and when it started to beat again it was irregular and erratic. Claimant also testified that she vomited a bloody, frothy sputum from her lungs.
2. Claimant was taken first to the emergency room at St. Catherine Hospital where she worked and was then transferred to St. Francis Regional Medical Center in Wichita where she remained in the intensive care unit for approximately three months. After an additional approximately one month on the regular floor at St. Francis, claimant was transferred to St. Joseph Rehabilitation Center for physical rehabilitation. Claimant was discharged from St. Joseph's on June 23, 1991.

3. After the cardiac arrest in 1991, claimant had several complications. They included several hospitalizations for sepsis, kidney failure requiring dialysis, liver failure with almost complete loss of liver function, and amputation below the knee on one leg.
4. At the time of the initial cardiac arrest, claimant was intubated for about six weeks. The intubation caused scarring and tracheal stenosis.
5. In 1988 claimant was diagnosed with mild rheumatic mitral stenosis, rheumatic mitral regurgitation, and rheumatic aortic regurgitation.
6. The cardiac arrest and subsequent treatment, including the intubation, were the result of the injury claimant suffered in the course of her employment for respondent on February 6, 1991. This conclusion is based on the opinion of Dr. Darrell J. Youngman. Dr. Youngman, claimant's treating physician during her stay at St. Francis in Wichita, opined that the incident at work on February 6, 1991, was the cause of claimant's cardiac arrest. He stated that the treatment he provided, which would have included the prolonged intubation, was the direct result of that incident.
7. On August 10, 1993, Dr. Gary Y. Shaw, who specializes in otolaryngology, performed surgery to remove the scar tissue caused by the prolonged intubation. Claimant experienced respiratory failure, suffered a myocardial infarction, and developed renal failure. Claimant died August 17, 1993.
8. Based on the autopsy report, the Board finds claimant died from the myocardial infarction complicated by acute respiratory distress syndrome.
9. The Board finds the stress of the surgery to remove the scar tissue contributed to and brought on the myocardial infarction and respiratory distress which were the cause of claimant's death. This finding is supported by the testimony of all three physicians who testified—Dr. Darrell J. Youngman, Dr. Gary Y. Shaw, and Dr. James E. Davia.
10. Michael James McGinnis is the deceased's minor child. Claimant was not married at the time of her death. Steven Mark McGinnis has been appointed conservator for Michael James McGinnis.
11. Although claimant had a rheumatic heart condition before the accident of February 1991, the record does not establish that respondent employed or retained claimant as an employee with knowledge of an impairment which constituted a handicap. Dr. Davia refers to a pre-employment physical report which, according to Dr. Davia, mentions the rheumatic heart condition. However, there is no indication in the record that claimant's preexisting condition constituted a handicap or that respondent had knowledge of an impairment which would constitute a handicap.

12. The Board finds the preexisting rheumatic heart condition did not cause or contribute to the cardiac arrest claimant suffered on February 6, 1991. The Board so finds on the basis of the opinion by Dr. Youngman that neither the rheumatic heart condition nor any other preexisting heart condition had an effect on her cardiac arrest in February 1991.

13. At the time of the preliminary hearing in this case, September 17, 1991, the ALJ ordered respondent to pay future medical treatment but held in abeyance any decision on the expenses, other than for treatment by Dr. Youngman, incurred prior to the hearing. At the oral argument before the Appeals Board, the parties stated that there was no disagreement about what those expenses are.

Conclusions of Law

1. Claimant suffered accidental injury arising out of and in the course of her employment on February 6, 1991, when struck by a patient.

2. When an injury arises out of and in the course of employment, every natural consequence that flows from that injury is compensable. Makalous v. Kansas State Highway Commission, 222 Kan. 477, 565 P.2d 254 (1977).

3. Claimant's death on August 17, 1993, was a direct and natural consequence of the accidental injury claimant suffered February 6, 1991, and claimant's dependents are entitled to benefits pursuant to K.S.A. 1990 Supp. 44-510b.

4. The Board finds claimant's (deceased's) surviving minor child Michael James McGinnis is a wholly dependent child as defined in K.S.A. 1990 Supp. 44-508(c)(3) and is entitled to all weekly benefits payable. Payments should be made to Steven Mark McGinnis as conservator for Michael James McGinnis. K.S.A. 44-513a.

5. Respondent is to pay weekly benefits of \$278 to the surviving minor child beginning as of August 26, 1993, the date temporary total disability benefits ceased, and continuing for the period specified in K.S.A. 1990 Supp. 44-510b as follows:

(3) Any wholly dependent child of the employee shall be paid compensation, except as otherwise provided in this section, until such dependent child becomes 18 years of age, except that any such dependent child who is not physically or mentally capable of earning wages in any type of substantial and gainful employment, or who is enrolled as a full-time student in an accredited institution of higher education or vocational education shall be paid compensation until such dependent child becomes 23 years of age.

6. Respondent is also ordered to pay the reasonable expense of burial not to exceed \$3200 upon proper presentation to respondent of the statements for such reasonable burial expenses. K.S.A. 1990 Supp. 44-510b(f).

7. Under the law applicable at the time of claimant's accident, the Kansas Workers Compensation Act shifted liability for injuries to handicapped employees under certain circumstances. If the employer knowingly employed or retained a handicapped employee and that employee later suffered an injury which was caused or contributed to by the handicap, the Fund is liable for all or a part of the benefits. K.S.A. 1990 Supp. 44-567.

8. The Board concludes respondent has not established a basis for imposing liability on the Fund. Respondent has not established that it employed or retained claimant with knowledge of an impairment constituting a handicap. Respondent has also not established that a preexisting impairment caused or contributed to the cardiac arrest of February 6, 1991. The Board, therefore, denies respondent's request to require the Fund to pay benefits due.

9. Respondent is further obligated to pay medical expenses reasonably necessary to cure and relieve the effects of the injury claimant suffered on February 6, 1991. K.S.A. 1990 Supp. 44-510.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the October 10, 1997 Award of Administrative Law Judge Kenneth S. Johnson should be, and hereby is, reversed.

Respondent is ordered to pay Steven Mark McGinnis, as conservator for Michael James McGinnis, \$278 per week beginning August 26, 1993, and continuing for the period specified in K.S.A. 1990 Supp. 44-510b(a)(3).

Respondent is further ordered to pay reasonable burial expenses not to exceed \$3200.

Respondent is further ordered to pay medical expenses reasonably necessary to cure and relieve the effects of the injury claimant suffered on February 6, 1991.

The Appeals Board approves and adopts the orders by the ALJ relating to the expense of administering the Workers Compensation Act.

IT IS SO ORDERED.

Dated this ____ day of April 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: James B. Zongker, Wichita, KS
B. G. Larson, Dodge City, KS
Gary R. Hathaway, Ulysses, KS
Office of Administrative Law Judge, Garden City, KS
Philip S. Harness, Director